



NEW MEXICO  
GENERAL SERVICES DEPARTMENT

## LEASE AND OPERATING AGREEMENT



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GENERAL SERVICES DEPARTMENT

THIS AGREEMENT for the lease and operation of the wastewater treatment plant at the New Mexico State Penitentiary ("Penitentiary") is entered into this 1 day of SEPT, 2010, between the County of Santa Fe, hereinafter referred to as "County," or "Lessee" and the New Mexico General Services Department, Property Control Division, hereinafter referred to as "State" or Lessor".

**WHEREAS**, the County has constructed a jail facility a public safety complex, and in the near future, plans to construct the Santa Fe Studios Complex, hereinafter collectively referred to as the "County Facilities", on County property across State Road 14 from the Penitentiary;

**WHEREAS**, the County intends and will continue to diligently proceed with its intent to establish wastewater treatment service to the County Facilities and the surrounding vicinity;

**WHEREAS**, the Penitentiary currently has a wastewater treatment system, hereinafter referred to as "System", which treats sewage from the Penitentiary and the nearby Department of Military Affairs Complex and the System has excess treatment capacity available; and

**WHEREAS**, as part of its intent to extend utility services to the County Facilities and surrounding vicinity, the County has expressed its desire to utilize the system as a primary component of the County wastewater utility system.

**THEREFORE**, in consideration of the foregoing, the rent herein reserved, the covenants herein contained, and other good and valuable consideration, Lessor does hereby lease, demise and let unto Lessee the property herein described for the term in accordance with the conditions herein set forth. The parties agree as follows:

1. **DESCRIPTION:** The premises, herein after referred to as "Premises" leased herein, is the real property, more particularly described in Exhibit A, including the System and related infrastructure, but specifically excluding the influent lines, manholes and lift stations for sewage origination solely from the Penitentiary and the Department of Military Affairs Companies. In addition, the Premises shall include those items of capital outlay equipment listed in Exhibit B.
2. **TERM:** The term of this lease shall be for one (1) year beginning 9/1, 2010 and ending 8/31, 2011. By mutual agreement the parties may extend this lease up to three years in one year increments.
3. **RENT:** As consideration for the use of the premises, Lessee agrees to provide free wastewater treatment service for up to 3,750,000 gallons per month of sewage from the Penitentiary for the term of the lease agreement. Sewage treatment for the Penitentiary and the Department of Military Affairs will be given priority over other potential services

users.

4. **CONDITIONS OF PREMISES:** Lessee hereby acknowledges that Lessee has made an on-site inspection of the Premises, that no representations as to the condition of the Premises have been made by Lessor, and Lessee hereby accepts the demised Premises in their present condition.
5. **IMPROVEMENTS:** Lessee shall not make any changes or improvements to the Premises without the express written consent of Lessor, which consent shall not be unreasonably withheld or delayed. Unless otherwise agreed upon, all improvements the Premises are owned by Lessor.
6. **MAINTENANCE:** Lessee shall, at Lessee's sole expense, keep and maintain the Premises and all improvements thereto in the condition found upon commencement of this lease and shall not suffer or permit any continuing nuisance thereon. Lessee shall effectuate, at its sole expense, any repairs to the System necessary for the maintenance and continued operation of the System. Lessee shall comply with the conditions of the System warranties in effect. Lessor shall provide Lessee with copies of such warranties and any pertinent operational manuals. Lessee shall permit Lessor to come upon the Premises upon reasonable notice to Lessee in order to inspect the Premises.
7. **ASSIGNMENT:** Lessee may not assign this lease or mortgage, alienate, or hypothecate the Premises or any part thereof without the express written consent of Lessor. Lessee may not subcontract the operation of the System to a public or private person or entity without the express written consent of Lessor, which consent shall not be unreasonably withheld or delayed.
8. **PERSONAL PROPERTY:** All personal property of the Lessee, its employees, agents, customers and invitees kept on the Premises shall be at the sole risk of the Lessee, and Lessor shall not be liable for any damage thereto, unless damages are caused by the actions of the Lessor or its agents.
9. **UTILITIES AND COSTS OF OPERATION:** Commencing with the lease term, Lessee shall be responsible for the provision and payment of any utilities needed to operate that portion of the System which is part of the leased Premises and shall make provision for the payment of any utilities, including but not limited to electricity, necessary for the operation of that portion of the System. Lessee shall install a meter in order to record electricity used to operate the wastewater treatment plant. Lessee shall install a meter on its influent sewage line in order to measure the sewage conveyed through its influent line to the wastewater treatment plant. Lessee shall pay all costs related to the operation of that portion of the System.
10. **OPERATION AND RATES:** Lessee shall operate that portion of the System which is part of the leased Premises at its own expense. Lessee may establish and charge reasonable standard rates for the service provided to its customers with the exception of the service provided for in paragraph 3 of this agreement. The County, at its sole

discretion, may modify those standard rates from time to time. If the monthly flow from the Penitentiary exceeds 3,750,000 gallons, the Lessee shall charge its applicable rate for treatment of such excess volumes.

11. **COMPLIANCE WITH LAWS:** Lessee shall comply with all applicable federal, state and local laws and ordinances in the use and operation of the System, including laws pertaining to water quality and safety. Lessee or its subcontractor shall, at its expense, make application for and obtain any and all permits necessary for the operation and any necessary construction of said System.
12. **LESSOR COOPERATION:** Lessor shall cooperate with Lessee in complying with all pertinent regulatory or legal requirements relating to the operation and/or regulatory permit requirements relating to parts of the System which are under the control of the Lessor.
13. **DISCRIMINATION:** Lessee, with respect to employment of its staff and to those persons using the Premises or receiving services from Lessee, shall not discriminate unlawfully with respect to race, sex, national origin, physical handicap, religion or as to any other class protected against discrimination by applicable state or federal law.
14. **NOTICE:** All notices relating to this lease shall be in writing and shall be delivered to the following addresses and, if mailed, sent certified or registered mail:

Lessor: Director, Property Control Division  
P.O. Box 6850  
Santa Fe, NM 87502

Lessee: Director, Utilities Section  
Public Works Division  
Santa Fe County  
P.O. Box 276  
Santa Fe, NM 87504

And:  
County Attorney  
Santa Fe County  
P.O. Box 276  
Santa Fe, NM 87504

or to such other address as either party may give to the other party by written notice as set forth above.

15. **WAIVER:** No failure on the part of Lessor or Lessee to exercise, or delay in exercising any right, power or privilege hereunder, shall preclude other or further exercise thereof, or exercise of any other right, power or privilege. The right or limitations herein provided are cumulative and not exclusive of any rights and remedies otherwise provided by law or equity.

16. **EXPIRATION:** Upon expiration of the term or early termination of this lease, Lessee shall peaceably surrender to Lessor possession of the Premises and all improvements thereon in good condition and repair, reasonable wear and tear excepted.
17. **PROPERTY INSURANCE:** Lessee shall carry and maintain in full force and effect during the term of this lease, at Lessee's sole cost and expense and as additional rent hereunder, property insurance coverage in aggregate amount of not less than one-hundred percent (100%) of full replacement cost of the facility plus any improvements to the Premises. Any such insurance policy or policies shall name the Lessor as an additional insured.
18. **PUBLIC LIABILITY INSURANCE:** Lessee shall carry and maintain in full force and effect during the term of this lease, at Lessee's sole cost and expense and as additional rent hereunder, public liability insurance in the form and coverage limits provided for in the Tort Claims Act as such statute may be amended from time to time.
19. **DEFAULT OF LESSEE AND REMEDIES OF LESSOR:** If any of the following "Events of Default" occurs;
- A. Lessee's abandonment of the Premises for a period of thirty (30) continuous days;
  - B. Lessee's breach or default under any material term, covenant or condition of this lease; or
  - C. Lessee's failure to pay when due any insurance premiums required to be paid hereunder.

Upon occurrence of an Event of Default, Lessor shall give Lessee notice by certified or registered mail specifying what Event of Default has occurred. Unless the Event of Default is remedied or obviated by Lessee within thirty (30) days after receipt of such notice, or unless within such thirty(30) day period Lessee shall have commenced and shall continue to take action for the purpose of remedying or obviating such Event of Default and shall thereafter, in good faith, prosecute such action to completion, Lessor may declare the forfeiture of the interest of Lessee in this Lessee by giving Lessee written notice thereof by certified or registered mail, and this lease shall be terminated forthwith.

Upon receipt of such notice of forfeiture, Lessee shall immediately peacefully surrender the Premises, together with all improvements, buildings and fixtures thereon. Lessee shall not be liable for any future rental from the date of the termination if this remedy is pursued, and Lessor shall have no further obligation to Lessee under this lease.

20. **USES TO BE MADE OF THE PREMISES:** The Premises shall be used for the operation of the System and other related purposes. In no event shall the Premises be used for any unlawful purpose or other purpose constituting or creating a public or private nuisance.

21. **INGRESS AND EGRESS:** The Lessee shall have the rights of ingress and egress to the Premises through Lessor's property (either the proposed road along the northern edge of the Penitentiary, or through currently existing Penitentiary roads).
22. **SUCCESSION:** This lease shall extend to and be binding upon the heirs, successors and assigns of the parties.
23. **CONDEMNATION:** In the event that any or all of the Premises is condemned by any governmental agency, Lessor shall be entitled to all compensation awarded or paid pursuant to the condemnation without participation by Lessee.
24. **EARLY TERMINATION OF LEASE:** Lessee or Lessor may terminate this lease prior to the term set forth in Paragraph 2 of this lease, without penalty to the Lessee, upon occurrence of one or more of the following events:
- A. the New Mexico Legislature fails to grant sufficient authority and appropriations to the Lessee or Lessor to carry out the terms and conditions of the lease; or
  - B. the Santa Fe County Board of County Commissioners fails to make sufficient appropriations to the Lessee to carry out the terms and conditions of the lease;
  - C. title to the Premises is transferred pursuant to authorization by the New Mexico Legislature from the State to Santa Fe County; or
  - D. there is material breach/default by either party, and such party fails to cure or to pursue a good faith cure within thirty (30) days.
- Upon occurrence of one or more of the above events, this lease shall terminate when required by law or the acting party giving the other party thirty (30) days written notice of early termination whichever occurs first.
25. **REVERSION:** If the portion of the Premises intended for irrigation purposes is not required and or used for this intended purpose, then that portion no longer required will revert to the State of New Mexico.
26. **AMENDMENTS IN WRITING:** This lease shall not be altered or amended except by instrument in writing executed by the parties.
27. **MERGER OF PRIOR AGREEMENTS:** This lease incorporates all of the conditions, agreements, and understandings between the parties concerning the subject matter of this lease, and all such conditions, understandings and agreements have been merged into this written lease. No prior condition, agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this written lease.
28. **GOVENING LAW:** This lease shall be governed by and interpreted in accordance with the laws of the Stat of New Mexico.
29. **TORT LIABILITY:** By entering into this lease, the parties and their "public employees"

as defined in the New Mexico Tort Claims Act do not waive any sovereign immunity or other defense or other limitation of liability. No provision of this lease modifies or waives any provision of the New Mexico Tort Claims Act.

30. **THIRD PARTY:** No provision of this lease is intended to create in the public or any member thereof any third-party beneficiary or to authorize anyone not a party to the lease from maintaining suit thereunder.
31. **LESSOR/LESSEE RELATIONSHIP:** Nothing in this lease is intended or should be construed in any way, to lease is intended or should be construed in any way, to create or establish a partnership relationship between the Lessor and Lessee or to establish either party or an employee of either party as an agent, representative or employee of the other for any purpose whatsoever.
32. **RECORDING:** This lease shall be recorded in the Santa Fe County Clerk's office.
33. **LESSORS REPRESENTATION:** Lessor represents and warrants that it has clear and full title to the Premises and that there are no encumbrances on the Premises.
34. **DEPARTMENT OF MILITARY AFFAIRS:** Is it understood that the Department of Military Affairs shall purchase and install a meter on its sewage line in order to measure the sewage conveyed to the wastewater treatment plant.

IN WITNESS WHEREOF, the parties have executed this agreement this \_\_\_\_ day of \_\_\_\_\_, 2010.

Lessor: General Services Department

By

Bill Taylor  
Bill Taylor, Director  
Property Control Division

ACKNOWLEDGEMENT

STATE OF NEW MEXICO)

)SS

COUNTY OF SANTA FE )

The foregoing instrument was acknowledged before me this 3 day of August, 2010 by Property Control Division.

[Signature]  
Notary Public

My commission expires:

10/31/2010

Lessee: Santa Fe County

[Signature]  
Harry Montoya, Chairperson  
Board of County Commissioners

[Signature]  
County Finance Director

ATTEST:

[Signature]  
Valerie Espinoza, County Clerk

APPROVED AS TO FORM:

[Signature]  
Stephen C. Ross, County Attorney

EXHIBIT A

New Mexico State Penitentiary  
Wastewater System Premises  
Leased Property Description  
04-12-10

A tract of land lying and being situate within Section 35, T.16 N., R. 8 E., NMPM, Santa Fe County, New Mexico and being more particularly described as follows;

Beginning at a point, from whence the South quarter corner of Section 36, T.16N., R.8E., bears N.88°51'25" E., 2660.24 feet, thence along the following:  
S.88°51'25"W., 2057.21 feet,  
Thence N.00°22'51"W., 924.41 feet, Thence N.85°33'11"W., 518.52 feet,  
Thence N.32°15'42"W., 463.32 feet, Thence N.19°28'33"W., 106.67 feet,  
Thence N.48°34'39"W., 635.03 feet, Thence N.13°45'15"W., 246.70 feet,  
Thence N.05°21'53"W., 579.06 feet, Thence N.89°35'58"W., 3111.34 feet,  
Thence S.00°01'42"E., 467.10 feet, Thence N.89°37'57"W., 380.97 feet,  
Thence S.00°22'03"W., 973.14 feet, Thence N.89°54'45"E., 341.36 feet,  
Thence S.01°33'45"W., 234.70 feet, Thence N.89°48'55"W., 444.30 feet,  
Thence S.00°11'05"W., 675.00 feet, Thence S. 89°48'55" E., 840.01 feet,  
Thence S. 00°10'55"W., 325.82 feet to the point and place of beginning.

Containing an area of 135.604 acres, more or less



## **EXHIBIT B**

### **INVENTORY SEWAGE TREATMENT PLANT**

- 1) Office Equipment
  - A) Desk 2 ea.  
30"W x 60"L x 32"H
  - B) Filing Cabinet 4 ea.  
4-Drawer with lock
  - C) Book Shelves  
Four shelves each
  - D) Office Chairs
  - E) Blue Print Racks
  - F) Plant Operation Manuals
- 2) Laboratory Equipment and Various Items  
See Attached Sheets
- 3) Pumps, Tools & Equipment
  - A) 4 - 5 Hp Flygt Pumps  
(2 @ recirculation station + 2 @ effluent lift station)
  - B) 1 - 10 Hp Aurora Pumps
  - C) 2 - 40 Hp Turbine Pumps
  - D) 8 - 10 Hp Aerators
  - E) 6 - 5 Hp Aerators
  - F) 1 - 5 Hp Mechanical / Bar Screen
  - G) Chlorinator System
  - H) ½ Ton Hoist & Trolley
  - I) Air Blower with Hoses
  - J) Bench Grinder (Sears)

# EXHIBIT B

## LABORATORY EQUIPMENT AND VARIOUS ITEMS FOR WASTEWATER PLANT

ARTICLE AND DESCRIPTION	QUANTITY	AMOUNT
1) Biological Oxygen Demand Probe Self Stirring Probe Senses dissolved Oxygen and Temperature Model 57 Fisher Brand Model 5720A 120 volts 50/60 Hertz With Membrane Potassium chloride Kit	2	\$450.00
2) Biological Oxygen Demand Bottles 10 oz Frosted identification label Glass bottles are numbered consecutively Wheaten Brand	24	\$181.34
3) Biological Oxygen Demand Capsules Polyseed Capsules 100 milligrams	50	\$100.00
4) Adding Machine Casino Model Model FR-3100	1	130.00
5) Metric Conversion Calculator 128 metric conversion Fully addressable memory and memory recall Fisher brand	2	\$125.00
6) Computerized lab notebook Pocked-size file ASTM labels 16 character LCD Display Stores 7936 characters in up to 496 different entries Dimension 4 1/4 length 2 3/4 width 3/8 height	1	\$ 63.00
7) Disposable Aluminum Dishes Flat bottoms, smooth sides, flanged rims Fisher Brand Inside diameter and height 63x17.5	100	\$ 84.00
8) Gelman Metrical membrane filters Determining coliform Autoclavable Ensures complete retention	100	\$ 17.00

## EXHIBIT B

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9) Forceps, filter	10	\$100.00
Made of type 304 stainless steel		
Broad unserrated tips		
Sterilize by autoclave		
Length 4 1/2 inch		
10) Binder-free glass microfiber filter	100	\$ 18.25
Standard filter for suspended solids		
Auto clavable use to 550°C		
11) Vacuum filtration funnels	1	\$ 93.00
47 mm magnetic type		
Max operating temperature 121°C		
Auto clavable		
Graduated 100 ml to 300 ml		
Twin magnets seals filter		
12) Narrow-Mouth erlenmeyer flasks		
Pyrex brand with rain forced beaded top		
Capacity scale accurate to +5%		
Capacity		
25 ml	48	\$104.16
50 ml	48	\$104.16
125 ml	48	\$ 99.89
250 ml	48	\$103.20
500 ml	36	\$ 97.58
1000 ml	24	\$108.08
2000 ml	8	\$ 82.32
13) Kimax brand with detachable plastic sidearms		
Erlenmeyers with heavy walls		
White graduated scale		
Tooled mouth		
Sidearm with two-ear finger grip		
Capacity		
250 ml	18	\$181.44
500 ml	18	\$303.68
1000 ml	12	\$335.76
2000 ml	6	\$291.00
14) Kimax brand with pennyhead stoppers	12	\$170.16
For volatile or hygroscopic liquids		
Stopper No. 27		
15) Flask Carrier	1	\$ 56.00
Hold six keldahl flasks		
Special spring steel clamps		
Sturdy carrier constructed of stainless steel		

# EXHIBIT B

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16) Pyrex Brand		
Heat resistant volumetrics		
Class A flasks with machine blown bodies		
Heavy tubing neck		
Sharp graduation lines		
Calibrated "To contain"		
Capacity		
1 ml	12	\$ 54.84
2 ml	12	\$ 62.88
10 ml	12	\$100.32
25 ml	12	\$106.92
50 ml	12	\$109.80
100 ml	12	\$128.04
200 ml	12	\$148.28
500 ml	12	\$191.40
1000 ml	6	\$121.68
17) Nylon work gloves	12	\$ 21.00
18) Tissue forceps	8	\$ 94.00
1 X 2 teeth grip tissue security		
Forged construction, corrosion resistant		
With corrugated handles		
Length 4 1/2 inch stainless steel		
19) General-Purpose filtering funnels		
Pyrex brand with 60° angle bowls		
150 mm stems		
Top diameters		
50 mm	48	\$155.04
100 mm	24	\$117.84
20) General-Purpose filtering funnels		
Pyrex brand with 60° angle bowls		
100 mm stem		
Top diameter		
122 mm	12	\$111.48
147 mm	12	\$113.28
21) Separatory funnels	2	\$174.94
Pyrex brand with teflon plug stopcocks		
Stem length 65 mm		
22) Scotch brand magnetic labeling	1	\$ 10.00
8 inch X 1/2 w roll		
23) Adhesive vinyl tape	10	\$ 36.00
In 4 yd rolls		
1/2 width black		
24) Glass Rods	1	\$163.05
Bundle of pyrex Brand Rods		
Assorted sizes		

## EXHIBIT B

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25) Gloves	12	\$ 19.95
Stansolv class 100		
Highly resistant to puncture		
Garage 11 mil		
Length 13 inch		
Each pair in sealed anti-static poly bag		
26) Gloves	12	\$ 24.95
Hot mill		
Two layers or 12 oz cotton		
Handling of hot materials up to 204°C		
27) Lab labels	12	\$ 85.50
Accept all type of makings		
1000 labels per pack		
Length 3 inches		
Width 1 inch		
28) Ladders	1	\$ 67.50
Kik-Step stool		
Two steel steps cushioned with rubber matting		
Rubber bumper protect wall and equipment		
Height 14 1/2 inch X 15 1/2 inch base diameter		
29) Bottles	72	\$ 49.00
For water and wastewater products		
Capacity approximately 150 ml		
30) Fisher brand	1	\$ 47.00
Touch counter		
Combination marker and digital counter		
Durable aluminum		
Has audible click and zero reset knob		
Length 7 inch		
Net weight 6 oz		
31) Fisher micrometer EH series microscope	1	\$1089.00
Binocular viewing model		
With mechanical stage		
Objectives 4X, 10X, 40X and 100X		
Size 26 X 41 X 20 cm		
Model EBHL-Y or equal		
32) Plain glass microslides	10 pk	\$ 117.00
Clear, corrosion-resistant glass		
Precleaned and ready to use		
Approximately 1 mm thick		
Length 3 inch		
Width 1 inch		
33) Premium cover glasses	10 pk	\$ 67.50
Made of the finest optical glass		
Precleaned and ready-to-use		
Square size		
Size 25 X 25		

## EXHIBIT B

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34) Nitrogen Analysis	1	\$ 101.00
Cadmium reduction column		
Glass column for quantitative reduction		
Of nitrate to nitrite for colorimetric		
Measurement of samples		
Consists of an 85 ml reservoir		
35) Oxygen analysis	1	\$ 150.00
Model 57 accessories pack		
Battery pack and charger		
For use with submersible stirrer		
Includes 5 nile cells		
115 volts and 50/60 hertz charger		
36) Dissolved oxygen meter	1	\$ 150.00
Cable and adapters		
Model Y5I 27		
Length 25 feet		
Storage reel		
37) PH ATC probe	1	\$153.00
Signal solution temperature to meter		
For PH meter Model 915		
Model type accument		
38) PH glass body combination electrode	1	\$131.00
For routine PH and titration measurement		
Must be use with a accument Model 915 PH meter		
0-14 PH range		
Length 5.5 inch		
Connector BNC		
39) PH electronic tester	2	\$ 79.00
Measures from 9 to 14 PH		
Accuracy $\pm 0.2$ PH		
Temperature range 0° to 50°C		
Digital display reading in seconds		
Overall dimensions 5 5/8" L X 1 1/8" w y 5/8" H		
Operates on four 1.4 volts masteries		
40) Pipets		
Dual-Purpose Pipets		
Borosilicate glass		
Permanent amber marking		
Calibrated "To deliver/Blow out" and "To contain"		
.1 ml	12	\$ 68.00
.2 ml	12	\$ 68.00
.5 ml	12	\$ 68.00
1.0 ml	12	\$ 68.00
2.0 ml	12	\$ 68.00
5.0 ml	12	\$ 77.00
10.0 ml	12	\$ 91.00

## EXHIBIT B

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41) Pipets		
Volumetric pipets		
Ensure Highest accuracy		
Meets class A volume accuracy		
Meets class B flow time requirements of ASTM		
Calibrated "To deliver"		
Identified by large numeral or bulb		
Borosilicate glass		
Permanent amber marking		
Fast outflow		
Capacity		
0.5 ml	12	\$ 48.00
1 ml	12	\$ 48.00
5 ml	12	\$ 52.00
10 ml	12	\$ 58.00
25 ml	12	\$ 97.00
100 ml	12	\$173.00
42) Kimax-51 brand mols pipets		
Type 1		
Class B pipets		
Calibrated "to deliver"		
Ending above taper		
Permanent brown		
Tempered tips and tops		
Capacity		
1/4 ml	12	\$ 48.48
1 ml	12	\$ 51.24
2 ml	12	\$ 51.84
5 ml	12	\$ 51.84
10 ml	12	\$ 59.80
25 ml	12	\$ 93.48
43) Wooden pipet rack	1	\$ 31.00
Hold 12 pipets		
Pipets supported horizontally		
Length 7", width 9", height 10"		
44) Pipet Bult-Type safety fillers	10	\$185.00
Fits any size pipe		
Meets OSHA requirements		
Made of 100 % natural rubber		
Three stainless-steel ball valves control vacuum		
45) Pipet cleaning equipment	1	\$117.40
Pipet washers/Rinsers		
For pipets up to 16 inches		
Overall height 22 3/4 inches		
47) Pipet sterilizing box	2	\$ 58.00
Rugged stainless steel		
Round - box		
With snug-fitting cover		
Diameter 2 1/2 inch		
Height 16 1/2 inch		